

4.7 *Cost* - Bills for costs and expenses reimbursable under this Agreement, except those advance payments specifically covered herein, and bills for additional rental or rebates resulting from retroactive adjustments pursuant to Article 4.5, shall be payable within thirty (30) days after presentation. Nonpayment of bills shall constitute a default of this Agreement.

4.8 *Late Payment Penalty* - If Licensee shall fail to pay when due any sum due Licensor hereunder, Licensee shall pay in addition to the sum due a late payment penalty of 1.5% for each 30-day interval or portion thereof. Partial payment shall be applied first to payment of accrued penalties.

5. *SURETY BOND*

Licensee shall furnish bond or an irrevocable, standby letter of credit issued by a federally chartered commercial bank of good standing and acceptable to Licensor, in such amount as Licensor from time to time may require, and in an initial amount in accordance with Exhibit C hereto attached, to guarantee the payment of any sums which may become due Licensor for fees due hereunder or charges for inspections or for work performed for the benefit of Licensee under the Agreement, including the removal of Licensee's facilities upon termination of this Agreement by any of its provisions. If Licensee shall fail to pay any sums demanded by Licensor as due under this Agreement, Licensor may, at its option, receive payment from Licensee's surety or sureties, whether or not Licensee contests its liabilities to pay such sum, and whether or not Licensor exercises any other rights or remedies it may have at law or under this Agreement. Failure of Licensee to continually comply with this Article 5 shall be an event of default.

6. *MAKE-READY WORK*

6.1 *Pole*

6.1.1 When an application for a license is submitted by Licensee, a field survey shall be required, at Licensee's expense, for each pole to which attachment is requested to determine the adequacy of the pole to accommodate the cable television facilities.

6.1.2 The field survey shall be performed jointly by representatives of Licensor and Licensee. Licensee shall furnish to Licensor data necessary to perform the field survey, in a format specified by Licensor and according to standards of accuracy and completeness satisfactory to Licensor.

6.1.3 In the event Licensor determines that a pole to which Licensee desires to attach is inadequate or otherwise needs modification to the existing facilities of Licensor to accommodate the Licensee's facilities, Licensor shall notify Licensee in writing of the estimated charges for the Make-Ready Work that will apply. Licensee shall have sixty (60) days from the date of the

notice to indicate its authorization for completion of the required Make-Ready Work and acceptance of the resulting charges.

6.1.4 Licensee shall pay Licenser for Make-Ready Work prior to Licenser's commencing same in such amounts as determined by Licenser in its sole discretion. The method used by Licenser to determine charges for Make-Ready Work may be altered by Licenser at any time without notice to Licensee.

6.1.5 Licensee shall also notify other licensees and/or joint pole participants attached to said pole and pay for any expense incurred by it or them in transferring or rearranging their facilities to accommodate the Licensee's facilities. Licensee shall not be entitled to reimbursement of any amounts paid to Licenser for pole replacements or for rearrangement of facilities on any pole by reason of the use of Licenser, other licensees and/or joint pole participants of any additional capacity resulting from such replacement or rearrangement.

6.2 *Anchors*

Should Licensee install any anchor(s) to accommodate its guy wire, the type and placement of Licensee's anchor(s) shall be approved by Licenser prior to installation. Any such anchor shall be placed so that Licensee's guy wire does not interfere with any guy wire of Licenser.

7. *STANDARDS AND SPECIFICATIONS*

7.1 *Maintenance of Licensee's Facilities*

7.1.1 Licensee shall, at its own expense, make and maintain all its attachments and facilities in safe condition and in thorough repair, and in a manner suitable to Licenser and so that said attachment and facilities of Licensee will not conflict with or alter existing equipment or use of said poles by Licenser, or by other utility companies using or having the right to use said poles, or interfere with the working use of facilities thereon or which may from time to time be placed thereon.

7.1.2 Licensee's cable shall be attached to Licenser's poles with a minimum of twelve (12) inches clearance from telephone cables, exclusive of riser cables, and shall be placed on the same side of Licenser's poles as telephone cables. The use of standoff brackets for Licensee's cables for clearance purposes is prohibited.

7.2 *Standards*

7.2.1 Licensee's cables, wires and appliances, in each and every location, shall be maintained in accordance with the requirements and specifications of the National Electrical Safety Code or any amendments or revisions of said Code, the latest editions of the

Bell System Manual of Construction Procedures and safety requirements of Licensor and in compliance with any rules or orders now in effect or that hereafter be issued by the State Regulatory Authority, or other authority having jurisdiction. The Licensee shall maintain its facilities on the Licensor's poles so as to avoid making said poles unsafe or unsightly in appearance. Licensee has the right to demand removal of any facilities on the Licensor's poles which will make said poles unsafe or unsightly in appearance. The Licensor has the right to refuse attachment by the Licensee of its facilities if in the opinion of the Licensor the attachment is being maintained in a manner that makes said poles unsafe or unsightly in appearance. Drawings marked Exhibits 1 to 8 inclusive, attached hereto and made a part hereof, are descriptive of required construction under some typical conditions, where span lengths are not over three hundred fifty feet (350') and voltage of power facilities does not exceed fifteen thousand (15,000) volts as measured between phase conductor and ground.

7.2.2 Licensee agrees to take any necessary precautions prescribed by Licensor, by the installation of protective equipment or otherwise, to protect all persons and property against injury or damage that may result from Licensee's attachments to Licensor's poles. If, in Licensor's opinion, Licensee has not taken such necessary precautions, Licensor shall have the right to terminate the permission herein granted upon thirty (30) days' written notice to Licensee. However, Licensor shall not be considered in any way responsible for the adequacy or inadequacy of such precautions of Licensee.

7.3 *Relocation* - Licensee shall at any time, at its own expense, upon five (5) days' notice from Licensor, relocate, replace or renew its facilities placed on said poles, and transfer them to substitute poles, or perform any other work in connection with said facilities that may be required by Licensor; provided, however, that in cases of emergency, Licensor may arrange to relocate, replace or renew the facilities placed on said poles by Licensee, transfer them to substituted poles or perform any other work in connection with said facilities that may be required in the maintenance, replacement, removal or relocation of said poles, the facilities thereon or which may be placed thereon, or for the service needs of Licensor, and Licensee shall, on demand, reimburse Licensor for the expense thereby incurred.

7.4 *Corrections* - If any part of Licensee's facilities is placed or maintained in violation of the standards prescribed in Section 7.2 and Licensee has not corrected the violation within fifteen (15) days from the date of written notice thereof, Licensor may, in addition to any other remedies it may have hereunder, remove or have removed Licensee's facilities from any or all of Licensor's poles or perform or have performed such other work and take such other action in connection with Licensee's facilities that Licensor deems necessary or advisable to comply with the applicable standards, at Licensee's cost and expense and without any liability on the part of Licensor; provided, however, that when in the sole judgment of Licensor such a condition may endanger the

safety of the employees of Licensor, other licensees, utilities or municipalities or the employees of other third parties, or interfere with the performance of any service obligations of Licensor, other licensees, utilities or municipalities, Licensor may take such action without prior notice to Licensee.

7.5 *Inspection of Licensee's Facilities* - Licensor may make periodic inspections of any of Licensee's facilities, and Licensee shall reimburse Licensor for one (1) inspection every twenty-four (24) months, for any such inspection resulting from a serious safety violation or a series of three or more violations of the Standards set forth in Section 7 during a twelve (12) month period or for inspections made in connection with any unauthorized attachment to poles or anchors of Licensor. Licensor shall give Licensee advance written notice of such inspections, except in those instances where, in the sole judgment of Licensor, safety considerations justify the need for such an inspection without the delay of waiting until a written notice has been forwarded to Licensee. The making of periodic inspections, or the failure to do so, shall not operate to relieve Licensee of any responsibility, obligation or liability assumed under this Agreement.

8. *UNAUTHORIZED ATTACHMENT*

8.1 Expansion of Licensee's cable television system or attachment of its transmission cable, riser cable, service drops, amplifiers, and other appurtenances without proper execution of an Exhibit A for such expansions is expressly prohibited. If any of the Licensee's facilities shall be found attached to poles or anchors of Licensor for which a License has not been issued, Licensor may, in addition to any other rights or remedies provided under this Agreement or by law require Licensee to remove such facilities forthwith or Licensor may remove them without liability, and the expense of removal shall be borne by Licensee, or Licensor may impose a charge and require Licensee to submit in writing, within fifteen (15) days after the date of written notification from Licensor, a pole attachment license application. If such application is not received by Licensor within the specified time period, Licensee shall remove its unauthorized attachment within fifteen (15) days of the final date for submitting the required applications, or Licensor may remove such unauthorized attachment without liability, and the expense of such removal shall be paid by Licensee.

8.2 The charge for unauthorized attachments shall be \$50.00 per attachment and shall be paid by Licensee, whether or not Licensee is permitted to continue the attachment.

8.3 No act or failure to act by Licensor with regard to said unlicensed use shall be deemed a ratification or the licensing of the unlicensed use; and if any license should be subsequently issued, said license shall not operate retroactively or constitute a waiver by Licensor of any of its rights or privileges under this Agreement or otherwise; provided however, that Licensee shall be subject to all liabilities, obligations and responsibilities of this Agreement in regard to said unauthorized use from its inception.

8.4 Licensor shall have the right and option to conduct an inventory of Licensee's facilities at various times during the term of this agreement, upon written notice thereof to Licensee no later than thirty (30) days in advance of such inventory. An inventory may be conducted by Licensor's employees or by others retained by Licensor for such purpose. Licensee shall have the right and option to have its employee or representative jointly conduct the inventory with Licensor's employee or representative, but if Licensee shall decline to involve a representative, then it shall be deemed to have accepted the results of the inventory. If the total number of poles to which Licensee's facilities are attached exceed the number of poles reported by Licensee by five percent (5%), or if the number of amplifiers exceed the number reported by the Licensee, by five percent (5%), then Licensee shall reimburse Licensor for its out of pocket costs of conducting such inventory plus a fifteen percent (15%) markup.

8.5 If as a result of conducting such inventory Licensor discovers that Licensee has attached its facilities to a greater number of poles than have been reported by Licensee, then Licensee shall identify those attachments which it determines to be unreported. At the option of Licensor those attachments which it has determined as unreported shall either be removed pursuant to Article 8 hereof or reported and a charge paid therefor pursuant to Article 8 hereof.

9. *LEGAL REQUIREMENTS*

9.1 *Laws and Regulations* - Licensee shall at all times observe and comply with all applicable laws, ordinances, statutes, rules or regulations which in any manner relate to the rights and obligations of Licensee under this Agreement.

9.2 *Permits* - Licensee shall obtain authority to erect and maintain its facilities on public and private property or within public streets and highways and shall secure necessary consent from state and municipal authorities or from the owners of property to construct and maintain facilities at the locations of poles of Licensor which it desires to use. No use of Licensor's corridors or poles shall be made prior to Licensee's obtaining all necessary permits. Licensee shall submit to Licensor such evidence of compliance with the foregoing requirements, as Licensor may require.

10. *RISK OF LOSS*

10.1 Licensee shall exercise reasonable care to avoid damaging the facilities of Licensor, and of other licensees, utilities or municipalities attached to Licensor's poles. Licensee assumes all responsibility for any and all loss or damage caused by Licensee's employees, agents or contractors. Licensee shall make an immediate report to Licensor and to other licensees, utilities or municipalities, as appropriate, of the occurrence of any such damage and shall reimburse the respective parties for all costs incurred in making repairs.

10.2 Licensee agrees to take any necessary precautions prescribed by Licensor, by the installation of protective equipment or otherwise, to protect all persons and property against injury or damage that may result from Licensee's attachments to Licensor's poles. If, in Licensor's opinion, Licensee has not taken such necessary precautions, Licensor shall have the right to terminate the permission herein granted upon thirty (30) days' written notice to Licensee. However, Licensor shall not be considered in any way responsible for the adequacy or inadequacy of such precautions of Licensee.

10.3 Licensee expressly assumes responsibility for determining the condition of all poles to be climbed by its employees, contractors or employees of contractors. Licensor disclaims any warranty or representation regarding the condition and safety of the poles covered by this Agreement. Licensee acknowledges that poles of the Licensor will from time to time become unserviceable and unsafe for climbing prior to Licensor's discovery of such condition. Licensor agrees that upon notification it will replace any pole that has become unserviceable.

11. *LIMITATION OF LIABILITY*

Licensor reserves to itself, its successors and assigns, the right to locate and maintain its corridors and poles and to operate its facilities in such a manner as in its sole judgment will best enable it to fulfill its service requirements. Licensor shall not be liable to Licensee or its subscribers for any special, indirect or consequential loss or damage, arising in any manner out of the use of Licensor's poles or Licensor's actions or omissions in regard thereto, and Licensee shall indemnify and save harmless Licensor from and against any and all claims, demands, causes of action, cost and fees or expenses of whatever kind resulting from any such loss or damage.

12. *INDEMNITY*

Licensee shall indemnify, defend and save harmless Licensor from and against any and all liability, claims, demands, loss, costs and expenses, to include attorney's fees, and any judgment for actual or punitive damages because of: (1) damages to property, (2) injury or death to persons whether such injury or death is to Licensee's or Licensor's employees or agents, or employees of others, or the public, (3) any and all such interference with the service rendered by Licensee over its cable or to patrons of Licensee, (4) payments made under any Worker's Compensation Law or under any plan for employees' disability and death benefits, specifically including employees of Licensee or its agent; which may arise out of or be caused by the erection, maintenance, presence, operation or removal of Licensee's cable or the proximity of Licensee's cable to the wires and facilities of Licensor, or any act of Licensee, its agents or employees, on or in the vicinity of Licensor's poles, or any claims upon Licensor for additional compensation for use of its distribution rights of way for any additional use by the Licensee. Licensee shall carry contractual liability insurance to insure the foregoing indemnity agreement and such other insurance as may be

necessary to protect the Licensor from and against any and all claims, demands, actions, judgments, costs, expenses and liabilities of every name and nature which may arise or result, directly or indirectly, from or by reason of this agreement and any injury, loss or death that may result from this license agreement. The amounts of such insurance for property damage shall be Two Hundred Thousand Dollars (\$200,000) as to any one accident, and for injury to, or death of persons, shall be One Million Dollars (\$1,000,000) as to any one accident. Licensee shall also carry such insurance as will protect it from all claims under any Workers' Compensation Laws in effect that may be applicable to it. All insurance required shall remain in force for the entire life of this Agreement or any continuation or extension hereof and until Licensee's cable is removed from the poles of Licensor. The company or companies issuing such insurance shall be approved by Licensor. Licensee shall submit to Licensor a certificate by each insurance carrier showing effectiveness of insurance in accordance with this Agreement and containing a provision that it will not cancel or change any policy of insurance issued except upon thirty (30) days' notice to Licensor.

13. *TERM AND TERMINATION*

13.1 *Term* - This Agreement shall continue in effect for a term of one year from the effective date hereof, and thereafter until terminated by either party or as otherwise provided in this Agreement.

13.2 *General Termination* - At any time following the expiration of the initial one-year term of this Agreement, either party may terminate this Agreement or terminate or modify any license issued hereunder by giving the other party at least sixty (60) day's prior written notice thereof. All notices of termination or modification of a license by Licensee shall utilize the form as set forth in Exhibit B, attached hereto, as it may be revised from time to time.

13.3 *Termination for Default*

13.3.1 If Licensee fails to comply with any of the terms and conditions of this Agreement or default in any of its obligations under this Agreement, and fails within thirty (30) days after the date of written notice from Licensor to correct such noncompliance or default, Licensor may, at its option and in addition to any other rights or remedies it may have, immediately terminate this Agreement and all licenses issued pursuant hereto, under which such noncompliance or default has occurred.

13.3.2 Notwithstanding the provisions of Section 13.3.1, Licensor may immediately terminate this Agreement, or any license issued hereunder, without prior notice to Licensee, for any defaults by Licensee of the following sections of this Agreement: Section 5, SURETY BOND, Section 9, LEGAL REQUIREMENTS and insurance requirements of Section 12, INDEMNITY.

13.3.3 In the event of such termination for default, Licensor may take possession of all of Licensee's facilities affected thereby

and subject to the rights of prior lien holders, may sell or otherwise dispose of such facilities for the purpose of securing payment of all fees, charges and expenses of such termination and collections, including but not limited to, attorney's fees and/or litigation expenses. Nothing contained herein, however, shall be construed to preclude Licensor from pursuing any other remedy provided by law for the collection of any indebtedness or enforcement of any obligation or covenants under this Agreement.

13.4 *Removal of Licensee's Facilities*

13.4.1 In the event of termination of this Agreement, Licensee shall remove its facilities from Licensor's poles within sixty (60) days from the date of termination; provided, however, that Licensee shall be liable for and pay all applicable fees and charges to Licensor until Licensee's facilities are actually removed from Licensor's poles. Licensee shall advise Licensor in writing as to the date on which the removal of Licensee's facilities from each pole has been completed.

13.4.2 If Licensee fails to remove its facilities in compliance with Section 13.4.1, Licensor shall have the right to remove such facilities at Licensee's expense and without any liability on the part of Licensor.

13.5 *Licensee's Liabilities and Obligations* - Termination of this Agreement or any license issued hereunder or the removal of Licensee's facilities, either in whole or in part, for any reason shall not affect Licensee's liabilities and obligations under this Agreement prior to the effective date of such termination or removal of Licensee's facilities.

14. *REMOVAL*

14.1 Licensee may at any time remove its cable from any pole or poles of Licensor, but shall immediately give written notice of such removal to Licensor, pursuant to Article 13.2.

14.2 Licensor reserves to itself and its successors and assigns the right to abandon a pole or poles to which the Licensee's facilities are attached. The Licensee will be given thirty (30) days' notice of each proposed abandonment and shall have the option of removing its facilities or of purchasing the abandoned pole or poles in place from the Licensor. The purchase price will be the estimated current installed cost of the pole or poles, depreciated at a rate of 3.4% per year, less the estimated cost to the Licensor of removing the pole or poles. If the Licensee does not remove its facilities and does not exercise its option to buy the abandoned pole or poles, the Licensee's facilities thereon shall be deemed worthless, and may be caused by the Licensor to be removed from the pole or poles, and be disposed of at any suitable place, all at the expense of Licensee, and Licensor shall be free from any liability therefor to anyone.

15. **WAIVER**

The failure of Licensor to enforce or insist upon strict compliance with any of the terms and conditions of this Agreement or to exercise or delay the exercise of any rights or remedies provided by this Agreement or by law shall not release Licensee from any of its duties or obligations imposed by law or by this Agreement and shall not be deemed a general waiver or relinquishment of any rights or remedies provided Licensor by this Agreement or by law, but the same shall be and remain at all times in full force and effect.

16. **ASSIGNMENT**

Licensee shall not assign or transfer the rights, or delegate the duties, or otherwise dispose of any right, title or interest in all or any part of this Agreement without the prior written consent of Licensor. No such consent granted by Licensor shall be effective until Licensee's successor or assignee has agreed to assume all obligations and liabilities of Licensee under this Agreement. However, no such consent by Licensor shall release Licensee from any obligation or liability under this Agreement.

17. **SERVICE OF NOTICE**

Any notice required or provided for hereunder shall be in writing and shall be delivered personally to the corporate representatives of Licensor and Licensee designated below, or shall be mailed thereto by certified mail, postage prepaid, return receipt requested. Notice shall be effective on the date delivered

To Licensor:

Duke Power Company
Distribution Department
P. O. Box 33189
Charlotte, NC 28242
ATTN: Manager, Distribution Special Projects
Tel. 704/373-2580

To Licensee:

TeleCable of Piedmont, Inc.
P. O. Box 2098
Norfolk, Virginia 23501-2098
ATTN: President
Tel. 804/624-5000

18. SEVERABILITY

Should any provision of this Agreement be determined to be unenforceable or illegal, then said provisions shall be severed from this Agreement and the remainder shall remain in full force and effect.

19. GOVERNING LAW AND VENUE

This Agreement shall be interpreted in accordance with the substantive and procedural laws of the state in which the poles the subject of this Agreement are located. Any action at law or judicial proceeding shall be instituted only in the state or federal courts of the state in which said poles are located.

20. EXECUTION AND EFFECTIVE DATE

This Agreement has been executed by the duly authorized officers of the parties and shall be effective as of the ____ day of ____, 19__.

Witnesses as to Licensor

DUKE POWER COMPANY (Licensor)

By _____
Vice President
Distribution

ATTEST: _____
Assistant Secretary

Witnesses as to Licensee

Telecable ^{of Piedmont, Inc.} Corporation (Licensee)

Suzanne J. Voss
Gina Ashley

By James S. Key
Vice President

ATTEST: Kileen B. Steadley
Secretary Assistant Secretary

EXHIBIT A

Application and Permit

_____ N.C. _____ 19____
Location

Licensee

Duke Power Company

In accordance with the terms of Agreement dated _____
application is hereby made for license to make attachments to the
following poles located in:

(City or Town - County and State)

_____ Proposed Attachments to be made to Duke Poles

_____ Amplifiers to be Attached to Duke Poles

Location of Attachments _____

By _____

Title _____
Licensee

License granted _____ 19__, subject to your approval of the
following changes and rearrangements at an estimated cost to you
of \$ _____

DUKE POWER COMPANY

By _____

Title _____

The above charges for the changes
and arrangements approved.

By _____ Permit No. _____

Title _____ Total Poles Attached
Licensee This Request _____

Total Poles Attached
To Date _____

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Complaint" were properly mailed, postage prepaid, this 15th day of November, 1990, to the following:

Duke Power Company
P. O. Box 33189
Charlotte, NC 28242
Attn: Rowe Hass

Federal Energy Regulatory Commission
825 North Capitol Street, N.E.
Washington, DC 20426

South Carolina Public Service Commission
P. O. Drawer 11649
Columbia, SC 29211


Julie P. Gordy

COLE, RAYWID & BRAVERMAN
1919 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, D.C. 20006-3458

AMERICAN SECURITY BANK, N.A.
MAIN OFFICE
1500 PENNSYLVANIA N.W.
WASHINGTON, D.C. 20013
15-55/540

31400

11/15/90

PAY TO THE
ORDER OF Federal Communications Commission

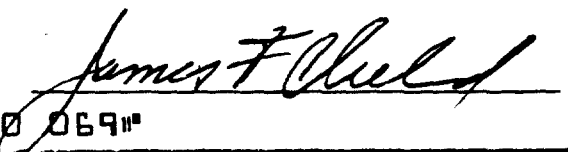
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MEMO

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COLE, RAYWID & BRAVERMAN

Federal Communications Commission

11/15/90

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